9 FAM 41.54 INTRACOMPANY TRANSFEREES (EXECUTIVES, MANAGERS, AND SPECIALISTS)

(a) Requirements for L classification.

(TL:VISA-153; 9-10-96)

An alien shall be classifiable under the provisions of INA 101(a)(15)(L) if:

(1) The consular officer is satisfied that the alien qualifies under that section; and *either*

(2) In the case of an individual petition, the consular officer has received official evidence of the approval by INS of a petition to accord such classification or of the extension by INS of the period of authorized stay in such classification; or

(3) In the case of a blanket petition, the alien has presented to the consular officer official evidence of the approval by INS of a blanket petition

(i) listing only those intracompany relationships and positions found to qualify under INA 101(a)(15)(L) or

(ii) to accord such classification to qualified aliens who are being transferred to qualifying positions identified in such blanket petition; or

(4) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

[Amended by 61 FR 1832; Jan. 24, 1996.]

(b) Petition approval.

(TL:VISA-9; 3-23-88)

The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) Validity of visa.

(TL:VISA-50; 11-15-91)

(1) The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2), or (a)(3) of this section.

(2) The period of validity of a visa issued on the basis of paragraph (a) to this section is not limited to the period of validity indicated in the blanket petition, notification, or confirmation required in paragraph (a)(4) or (a)(5) of this section.

(d) Alien not entitled to L-1 classification under individual petition.

(TL:VISA-50; 11-15-91)

The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa as the beneficiary of an approved individual petition under INA 101(a)(15)(L) is not entitled to such classification as approved.

(e) Labor disputes.

(TL:VISA-153; 9-10-96)

Citizens of Canada or Mexico shall not be entitled to classification under this section if the Attorney General and the Secretary of Labor have certified that:

(1) There is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment; and

(2) The alien has failed to establish that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout.

[Amended by 58 FR 68526; Dec. 28, 1993.]

(f) Former exchange visitor.

(TL:VISA-2; 8-30-87)

Former exchange visitors who are subject to the 2-year foreign residence requirement of INA 212(e) are ineligible to apply for visas under INA 101(a)(15)(L) until they have fulfilled the residence requirement or obtained a waiver of the requirement.

9 FAM 41.54 Related Statutory Provisions

INA 101(a)(15)(L)

(TL:VISA-50; 11-15-91)

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens–...

(L) an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

[Amended by Pub. L. 101-649, Sec. 206(c), 104 Stat. 5023; 8 U.S.C. 1101(a)(15)(L); November 29, 1990.]

INA 101(a)(44)

(TL:VISA-88; 4-22-94)

(44)(A) The term "managerial capacity" means an assignment within an organization in which the employee primarily--

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(B) The term "executive capacity" means an assignment within an organization in which the employee primarily–

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(C) If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

[Added by Pub. L. 101-649, Sec. 123, 104 Stat. 4995; 8 U.S.C. 1101(a); November 29, 1990.]

INA 214(b), in part

(TL:VISA-50; 11-15-91)

Every alien (other than a nonimmigrant described in subparagraph (H)(i) or (L) of section 101(a)(15)) shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 101(a)(15)...

[Amended by Pub. L. 101-649, Sec. 205(b)(1), 104 Stat. 5020; 8 U.S.C. 1184; November 29, 1990.]

INA 214(c), in part

(TL:VISA-50; 11-15-91)

(c)(1) The question of importing any alien as a nonimmigrant under section 101(a)(15)(H),(L), (O), or (P)(i) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing

employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant....

(2)(A) The Attorney General shall provide for a procedure under which an importing employer which meets requirements established by the Attorney General may file a blanket petition to import aliens as nonimmigrants described in section 101(a)(15)(L) instead of filing individual petitions under paragraph (1) to import such aliens. Such procedure shall permit the expedited processing of visas for entry of aliens covered under such a petition.

(B) For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

(C) The Attorney General shall provide a process for reviewing and acting upon petitions under this subsection with respect to nonimmigrants described in section 101(a)(15)(L) within 30 days after the date a completed petition has been filed.

(D) The period of authorized admission for-

(i) a nonimmigrant admitted to render services in a managerial or executive capacity under section 101(a)(15)(L) shall not exceed 7 years, or

(ii) a nonimmigrant admitted to render services in a capacity that involves specialized knowledge under section 101(a)(15)(L) shall not exceed 5 years.

[Amended by Pub. L. 101-649, Sec. 206(b), 104 Stat. 5023; 8 U.S.C. 1184(c); November 29, 1990.]

INA 214(h)

(TL:VISA-50; 11-15-91)

(h) The fact that an alien is the beneficiary of an application for a preference status filed under section 204 or has otherwise sought permanent residence in the United States shall not constitute evidence of an intention to abandon a foreign residence for purposes of obtaining a visa as a nonimmigrant described in subparagraph (H)(i) or (L) of section 101(a)(15) or otherwise obtaining or maintaining the status of a nonimmigrant described in such subparagraph, if the alien had obtained a change of status under section 248 to a classification as such a nonimmigrant before the alien's most recent departure from the United States.

[Added by Pub. L. 101-649, Sec. 205(b)(2), 104 Stat. 5020; 8 U.S.C. 1184; November 29, 1990.]

For the provisions of INA 214(j), see § 9 FAM 41.59 Related Statutory Provisions.

See also §41.59 Exhibit II for Chapter 16 of NAFTA.

SEC. 206. OF THE IMMIGRATION ACT OF 1990, PUB. L. 101-649

(TL:VISA-153; 9-10-96)

SEC. 206. INTRACOMPANY TRANSFEREES (L NONIMMIGRANTS).

(a) CLARIFICATION OF TREATMENT OF CERTAIN INTERNATIONAL ACCOUNTING FIRMS—In applying sections 101(a)(15)(L) and (203(b)(1)(C) of the Immigration and Nationality Act and section 124(a)(3)(A) of this Act, in the case of a partnership that is organized in the United States to provide accounting services and that markets in accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same international recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.